



November 10, 1999

Mr. Gary W. Smith
Legal Advisor
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR99-3210

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130219.

The City of Baytown (the "city") received a request for information pertaining to named individuals as "Reportee, Complainant, or Witness." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In our opinion, none of the submitted information is protected by common-law privacy.

Section 552.101 also protects the "informer's privilege." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers*

purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). In our opinion, the information you submitted as responsive to the request does not identify anyone as reporting violations of law. Therefore, you have not established that the information may be withheld under the informer’s privilege.

Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

In our opinion, you have not demonstrated that release of the requested information would interfere with law enforcement or that the information is otherwise protected under section 552.108. Therefore, you must release the requested information.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/jc

¹We have marked a portion of the information you submitted which does not appear to be responsive to the request for "Reportee, Complainant, or Witness" information on the individuals in question. This ruling does not address the public availability of that information.

Ref: ID# 130219

Encl. Submitted documents

cc: Mr. Darren Graves
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(w/o enclosures)